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Common Carrier Bureau  
Network Service Division  
Office of the ChiefBefore the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554Federal Communications Commission  
Office of Secretary

In the Matter of	)	
	)	
BellSouth Telecommunications,	)	NSD-L-96-7
Inc. Petition	)	

COMMENTS OF AT&T CORP.

Pursuant to the Commission's Public Notice, DA 96-1190, CC Docket No. 96-159, released July 26, 1996, AT&T Corp. ("AT&T") submits these comments on the petition of BellSouth Telecommunications, Inc. ("BellSouth") to waive LATA boundaries in certain areas of North Carolina in order to provide expanded local calling service ("ELCS"). As explained below, if BellSouth is in fact seeking approval to provide ELCS or any other service across LATA boundaries in its region without meeting the requirements of Section 271 of the new Telecommunications Act ("the Act"), then the Commission lacks the authority to grant its request. If, however, BellSouth believes that its proposal seeks to "modify" existing LATA boundaries, then it should be required to explain why such characterization is appropriate, and to show that the proposal would neither foreclose competition in the affected areas nor diminish BellSouth's incentive to open its local monopoly to competition.

More specifically, Section 271(a) of the Act prohibits any Bell company from providing in-region interLATA services, "except as provided elsewhere in [Section 271]." Section 271(b)(3) authorizes the provision of "incidental" interLATA services by a Bell Company, but BellSouth does not (and cannot) make any claim that the service that is the subject of its petition is an "incidental" service. In addition, Section 271(d) authorizes the Commission to approve a Bell Company application to provide other (~~i.e.~~, non-incidental) interLATA services, but only if the applicant meets the rigorous criteria specified therein.

Against this background, BellSouth has filed its petition, which purports to seek a "waiver" of LATA boundaries but relies at least in part on the authority granted to LECs to "modify" LATA boundaries with Commission approval.<sup>1</sup> The precise nature of the relief sought by BellSouth is therefore unclear. BellSouth's proposal could properly be characterized as seeking a "modification" only if it were proposing to move a LATA boundary, so that certain calls that would have been classified as interLATA prior to the modification would be classified as intraLATA post-modification, while other calls that would have been classified as intraLATA prior

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<sup>1</sup> Petition, p. 3, citing Section 3(43).

to the modification would be classified as interLATA post-modification.

In contrast, a proposal to ignore (as opposed to move) LATA boundaries pursuant to a "waiver" without satisfying the criteria set forth in Section 271(d) is foreclosed by the prohibition against RBOC provision of interLATA service contained in Section 271(a). The only exceptions to this prohibition are those provided for elsewhere in Section 271.<sup>2</sup> BellSouth does not -- and cannot -- cite any provision in Section 271 that would authorize it to provide service across LATA boundaries without making the showing required by Section 271(d).<sup>3</sup>

Contrary to BellSouth's perfunctory suggestion (p. 3), moreover, Section 4(i) of the Communications Act, 47 U.S.C. § 154(i), does not authorize the Commission to remove or waive the interLATA prohibition in these circumstances. It is well-settled that an agency "cannot rely on its general authority to make rules necessary to carry out its functions when a specific statutory directive defines the relevant functions of that agency in

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<sup>2</sup> Unlike the Modification of Final Judgment, the Act contains no provision for a "waiver" of the interLATA service prohibition.

<sup>3</sup> In this circumstance, BellSouth's (pp. 2 n.4, 3) reliance on Section 3(43) of the Act is misplaced, because the Commission's authority thereunder is limited to approving proposals to "modify" a LATA.

a particular area."<sup>4</sup> Congress has carefully delineated in Section 271(d) the circumstances in which the Commission may authorize an RBOC to provide service across LATA boundaries, and has expressly provided that no such authorization may be granted in any other circumstances. Accordingly, the general grant of authority to the Commission in Section 4(i) is simply irrelevant to BellSouth's petition.<sup>5</sup>

Finally, whether the relief sought by BellSouth is properly characterized as a "waiver" or "modification" of LATA boundaries, its petition raises serious issues regarding competition. Through its request, BellSouth seeks to provide service that is currently interLATA service. If it is permitted to do so, it will completely displace interexchange carriers currently competing to provide that service. Moreover, allowing a Bell company to chip away at the prohibition on its provision of in-region interLATA service without complying with the competitive checklist in Section 271 would reduce its

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<sup>4</sup> American Petroleum Institute v. EPA, 53 F.3d 1113, 1119 (D.C. Cir. 1995).

<sup>5</sup> See Railway Labor Executives' Assoc. v. NMB, 29 F.3d 655, 671 (D.C. Cir. 1994) (en banc) ("the duty to act under certain carefully defined circumstances simply does not subsume the discretion to act under other, wholly different circumstances, unless the statute bears such a reading"), cert. denied, 115 S. Ct. 1392 (1995).

incentive to open up their local exchange monopolies. Indeed, because the prospect of providing in-region interLATA service is a Bell company's only incentive,<sup>6</sup> the Commission should exercise whatever authority it has to grant this and similar petitions sparingly, if at all.

Respectfully submitted,

AT&T CORP.

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<sup>6</sup> See Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket No. 96-98, First Report and Order, FCC 96-325, released August 8, 1996, para. 55.

CERTIFICATE OF SERVICE

I, Ann Marie Abrahamson, do hereby certify that on this 26th day of August, 1996, a copy of the foregoing "Comments of AT&T Corp." was mailed by U.S. first class mail, postage prepaid, to the parties listed below.

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